UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

GORDON MACKAY,	§	
	§	
Plaintiff,	§	
	§	
v.	§	Civil Action No. _____
	§	
THERESA AMAVI, TARA	§	
TEMPLETON, INC., and BLUE	§	
ORCHID ENTERPRISES, L.P. f/k/a	§	
THE COMPLIANCE ALLIANCE, L.P.	§	
	§	
Defendants	§	

PLAINTIFF'S ORIGINAL COMPLAINT

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

Gordon MacKay files his Original Complaint against Defendants Theresa Amavi, Tara Templeton, Inc. and Blue Orchid Enterprises, L.P. f/k/a The Compliance Alliance, L.P., and would respectfully show this Court as follows:

INTRODUCTION

1.   Gordon MacKay, a computer programmer, seeks a judicial declaration pursuant to 28 U.S.C. § 2201 that he authored the computer programs at issue in this lawsuit and thus owns the copyrights to those programs pursuant to the Copyright Act, 17 U.S.C. § 101 et seq.

JURISDICTION AND VENUE

2.   This Court has jurisdiction pursuant to 17 U.S.C. § 101 *et seq.*, 28 U.S.C. § 1331 and 28 U.S.C. § 1338.

3.   Venue is proper in the Southern District of Texas because all or a substantial part of the acts and conduct described herein occurred in this district.

PARTIES

4.   Plaintiff Gordon MacKay ("Mackay") is an individual that resides in Houston, Texas.

5.   Defendant Theresa Amavi ("Amavi") is an individual that resides in Houston, Texas and may be served with process at her home or home office: Theresa Amavi, 3131 Memorial Ct. #15101, Houston, Texas 77007.

6.   Defendant Tara Templeton, Inc. ("TTI") is a domestic corporation that may be served with process through its registered agent: Theresa Amavi, 3131 Memorial Ct. #15101, Houston, Texas 77007.

7.   Defendant Blue Orchid Enterprises, L.P. *f/k/a* The Compliance Alliance, L.P. ("TCA") is a domestic limited partnership that may be served with process through its registered agent: Tara J. Hart, 3131 Memorial Ct. #15101, Houston, Texas 77007.

FACTUAL BACKGROUND

8.   Mackay is a computer programmer.

9.   TCA is a safety consulting business owned by Amavi. Upon information and belief, TTI is the general partner of TCA. TCA, TTI, and Amavi may be referred to collectively herein as "Defendants."

10.   Amavi's son, Hart, worked at TCA for approximately 10–15 years.

11.   In or about 2003, TCA contracted with a company called Intekrity to handle the IT needs for its business.

12.   Intekrity, in turn, engaged MacKay as a subcontractor to design and write certain computer programs for TCA.

13.   Upon information and belief, Intekrity sold and began operating under the name All Covered in 2008, but the relationships between the various parties did not change.

14.   Between 2003 and 2009, MacKay designed and wrote three computer programs for TCA: (i) TCA Instant, (ii) TCA Instant Online, and (iii) TCA CheckIn/Check Out (collectively, the "TCA Computer Programs"). As part of the design process, TCA would describe to MacKay what it wanted its computer programs to do. MacKay would, in turn, translate TCA's abstract ideas into workable computer programs by organizing and structuring the programs and writing the code in such a way to give effect to TCA's ideas.

15.   MacKay is not, and has never been, an employee of Defendants.

16.   There is no written agreement, signed or unsigned, between MacKay and Defendants.

17.   MacKay's business relationship with Defendants ended in approximately July 2009.

18.   In November 2009, Amavi fired Hart from TCA. Hart thereafter started his own safety consulting business, LMN Safety Solutions, Inc. ("LMN"), and hired MacKay as an independent contractor to design and write LMN's computer programs. MacKay did so.

19.   In November 2012, TCA and TTI filed suit against MacKay and numerous others in state court alleging claims against MacKay for: (1) misappropriation of trade secrets, (2) conversion, (3) conspiracy to use trade secrets/civil conspiracy, (4) fraud, and (5) unjust enrichment. Each of these claims is premised on the allegation that MacKay copied the TCA Computer Programs and used them to create LMN's computer programs. TCA and TTI further seek to permanently enjoin MacKay from using its "confidential, proprietary and/or trade secret

information," which by Defendants' own admission is contained within the work product authored by MacKay.

20.   Defendants claim ownership of all aspects of the TCA Computer Programs, including the copyrightable material authored by MacKay. By way of its state court claims against MacKay, TCA and TTI seek to restrict MacKay's right to reproduce and distribute his copyrightable work. A judicial determination of the authorship of the TCA Computer Programs, and resulting ownership of the copyrights to the TCA Computer Programs, is necessary to resolve the pending state court claims. The state court, however, lacks jurisdiction to make such a determination. As such, MacKay files this suit in federal court seeking a judicial declaration that he authored the TCA Computer Programs and thus owns the copyrights in those programs pursuant to 17 U.S.C. § 201.

REQUEST FOR DECLARATORY JUDGMENT

21.   MacKay incorporates the preceding allegations herein by reference.

22.   MacKay seeks a declaratory judgment pursuant to 28 U.S.C. § 2201 of his rights and legal status under the Copyright Act, 17 U.S.C. § 101 *et seq*. Specifically, MacKay seeks a judicial declaration that he authored the TCA Computer Programs and thus owns the copyrights in those programs pursuant to 17 U.S.C. § 201.

PRAYER

23.   For the reasons set forth above, MacKay seeks a judicial declaration that he authored the TCA Computer Programs and thus owns the copyrights in those programs pursuant to 17 U.S.C. § 201. MacKay further seeks reasonable attorneys' fees, costs, and expenses of this action, and any further relief to which MacKay may be justly entitled.

Respectfully Submitted,

By: //s// Jeffrey W. Wheelock
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